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SUBJECT: SUPREME COURT JUSTICES THINK COUP WAS ILLEGAL

Classified By: Ambassador Hugo Llorens for reasons 1.4 (b & d)

11. (C) Summary: A source on the Supreme Court staff said many justices think the removal of President Zelaya was unlawful. However, they rationalize it as necessary to avoid a bloodbath. The justices are uneasy with any suggestion that Zelaya receive amnesty. The source said a proposal being floated on the margins of the ongoing talks in Costa Rica was for both Zelaya and de facto caretaker President Micheletti to resign, in which case the Chief Justice would become president. End Summary.

Justices Question Legality of Coup

12. (C) A legal advisor to the Supreme Court told PolOff July 9 that many justices on the Court view the expulsion of Zelaya from the country as a mistake, even describing the act as "illegal." However, he said the view in Honduras is that Zelaya had to be taken out of the country to "avoid a blood bath." In a later conversation, the same source said Zelaya's removal really had to do with standing up to Hugo Chavez, and that "Honduran democracy could not have handled jailing a president."

13. (C) The legal advisor explained that many on the Court believe Armed Forces Chief Vasquez Velasquez made the decision to take Zelaya out of the country. He said the arrest warrant from the Court did not give Vasquez legal authority to take Zelaya out of Honduras, only to arrest him. He said a criminal case could and should be brought against Vasquez and the pilots that flew President Zelaya out of the country.

Opposition to Amnesty

14. (C) The legal advisor expressed concern about suggestions of granting amnesty to Zelaya and his team because, he said, the scale of Zelaya's corruption is so great. He said the Court could probably stomach Congressional pardons of political crimes, but would be reluctant to accept any compromise that would wipe away common crimes, such as corruption or money laundering. He cited the reported unauthorized withdrawals from the Central Bank by Minister of the Presidency Enrique Flores Lanza and cash supposedly found in Zelaya's personal office as examples. In the case of Energy Minister Rixi Moncada,

the legal advisor's contacts at the Public Ministry expressed confidence in their case against her, especially because the cash allegedly found in her hotel room matched the numbered bills that were allegedly withdrawn from the Central Bank.

15. (C) A Congressman told EmbOff that the Honduran Congress was divided on the subject of pardoning Zelaya but he thought the majority was opposed. He argued that in an election year the political cost was too high. The Congressman noted there had been only two cases of Congressional pardons since the return to democracy in 1982, and in Zelaya's case the charges involve treason and have no statute of limitations.

What if They Both Resign?

16. (C) The Supreme Court adviser said one of the solutions being floated on the margins at the first day of the talks in Costa Rica July 9 was for Micheletti and Zelaya to both resign, in which case the Chief Justice of the Supreme Court would become interim President. He was not confident of how this would work constitutionally.

Comment

17. (C) The Supreme Court advisor's viewpoint is similar to what we are hearing from many Honduran interlocutors. Many are now admitting that the forced removal of President Zelaya from Honduras was illegal, but continue to claim there was no other choice. The idea of some limited amnesty for "political" crimes appears palatable, as long as it is clear that no such amnesty for corruption would be permitted. The idea of both Zelaya and Micheletti resigning is interesting. Were he to resign as well, our reading of the Constitution is that the remaining 14 justices would elect a new Chief Justice from among themselves. That person would then become interim president under this scenario. The constitutional line of succession stops at the Chief Justice. End Comment.
LLORENS